

The Outside Within

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Maximilian Steinbeis Sa 1 Apr 2017

Dear Friends of Verfassungsblog,

the point-blank attack by the Hungarian government on the Central European University (CEU) has sent a wave of shock and disbelief over the world, and Verfassungsblog is one of many to declare full-hearted solidarity with the beleaguered institution – not alone because CEU is a place of tremendous academic excellence and intellectual vigor, neither because of CEU's unique master program in comparative constitutional law headed by our frequent contributor Rénata Uitz, but because this is a blunt attack on the freedom of science and thereby on a core element of the liberal constitutional state itself.

Now, Hungary as a constitutional state has been successfully gutted a long time ago, and it may feel kind of futile to raise once again our weak voices of protest, especially since Viktor Orbán is more likely encouraged than deterred by the fact that liberal constitutionalists dislike his doings. But that is not the point. The addressee of our protest should – my *ceterum censeo* for [half a decade](#) now, like [many others](#) – be the European Union, in particular the Council and above all the German federal government. Angela Merkel has let her [EPP buddy](#) Orbán uproot Art. 2 TEU like a boar in the vegetable garden, one of the most disgraceful aspects of her chancellorship. His blame is hers, too.

The motive for this latest strike by the Hungarian government seems obvious: *Gleichschaltung*. The CEU offers a space for independent and very clever and well-informed people to criticize the government fearlessly, so to get rid of the institution is to get rid of these people. GÁBOR HALMAI sees a "[legally sophisticated authoritarianism](#)" at work in Hungary, using formal legal arguments to dispose of political opponents.

Unlike with the *gleichschaltung* of the judiciary and the media, there is something else here: the CEU is not merely a source of criticism but a *foreign* source of criticism. Coming from inside, though. It is the outside within. It is accredited in the US state of New York and funded by George Soros, but it is situated in the middle of Budapest, with a high proportion of Hungarian students and faculty; it is a Hungarian university. This is what drives FIDESZ really crazy.

Populists are characterized by the fact that they want to perceive their own as a totality, as whole, eternal, preexisting by nature: their *own* country, their *own* history, their *own* political destiny, their *own* people. To see something as a whole, however, means to see it from the outside. To describe a house as a whole you have to step out of it. To see your body whole you have to look into the mirror. From the inside all you get to see are perspectives, respects, details, never the total. This is, before all tactical and strategic reasons, why populists need enemies – as a shield of reflection in which to see themselves, finally not only in this or that respect, finally as they supposedly really are, finally whole.

But what if this reflection image is full of blinding spots, facets from the outside flashing back the light from within – what then reflects what? What do you see? No clear image, no totality, just a blur of specks and highlights. This is what populists cannot stand. This is why they strive so stubbornly and against all reason to eliminate the outside within, whether it is NGOs in Russia or Imams in Germany or Soros-funded universities in Hungary. And this is what gives, in the eyes of their followers, the official justification that the amendment to the Higher Education Act is necessary on grounds of "national security", which taken literally can only be called bizarre, a semblance of plausibility.

Wo is afraid of the diaspora

In Germany, too, we sometimes find it difficult to tolerate the outside within. This is also reflected in the current discussion on the Turkish constitutional referendum. There are compelling reasons to reject Erdogan's plebiscite as antidemocratic both in content and procedure. But is one of them that Turkish referenda should not take place

on German soil in general? I have [talked at length about this](#) with RAINER BAUBÖCK. His answer: no. The Turkish diaspora remains Turkish whether it possesses German passports or not, and to get them to decide against Erdogan's authoritarian regime and for the liberal constitutional state you have to make them an offer. You have to give them access not just to the labor market and to education, but also to citizenship and the right to vote. In Bauböck's view, dual citizenship can be a bridge by which people send not only money back home but also democratic values.

The [legal question as to whether Germany was obliged to allow Erdogan to use his consulates in Germany as polling stations](#) is investigated by HANNAH BIRKENKÖTTER and ANNA VON NOTZ. The result: The federal government could, but did not have to agree to holding the Turkish constitutional referendum in Germany.

The Polish government has been pointing to Germany as an attempt to justify its struggle to bring the National Council of the Judiciary under its control, and thus the appointment and promotion of judges. That, according to ANNE SANDERS and LUC VON DANNWITZ, is not completely off the target as judicial appointments are [indeed decided politically in Germany, but nevertheless the the Polish attacks on the National Council of the Judiciary are clearly violating European standards](#).

Detached

The constitutional event with the greatest historical impact this week was undoubtedly the Brexit letter sent by the British Prime Minister, Theresa May, to Council president Donald Tusk on Wednesday. The next day, the British government published a White Book describing the replacement of European by British law in a rather smooth way, which according to KENNETH ARMSTRONG will [make neither the Remain or Leave camp happy](#) as Remainers will wonder why, if nothing really changes, they had to quit the EU in the first place, and the Leave camp might come to the conclusion that Brexit is still an unfinished political project. DANIEL SARMIENTO, on the other hand, foresees indeed [the law changing quite drastically](#) – through the void where the European Charter of Fundamental Rights used to be, which will not be incorporated into British law, to, according to Sarmiento, severe consequences.

In Spain, the Constitutional Court sways under the duty imposed on it by the legislature to to keep the republic together against the resistance of independence seeking Catalans. The [damage suffered by the court's legitimacy](#) is described in a thoughtful piece by JOAQUÍN URÍAS.

A new president will soon be elected in France, and the Socialist candidate Benoît Hamon is campaigning for a plan to democratize the Eurozone with its own parliamentary assembly. Sébastien Platon had recently [criticized](#) this plan on Verfassungsblog as an attack on the European Parliament. The authors of the Hamon plan, economist THOMAS PIKETTY, political scientists ANTOINE VAUCHEZ and GUILLAME SACRISTE and legal scientist STÉPHANIE HENNETTE, [respond to Platon's criticism](#) and call no less than Joschka Fischer as a witness: "Like him, we believe that a genuine European Parliamentary sovereignty needs to be built upon the shoulders of national parliamentary sovereignties, not against them."

A matter of human rights of great concern is the question of whether companies should be held liable for human rights violations in their supply chain, a question which the French legislature, unlike the German, has answered in the affirmative. France's [constitutional council has now declared this "Loi Rana Plaza" – named after the collapsed factory in Bangladesh with over 1000 dead – mostly constitutional](#), reports DAVID KREBS.

In Germany, the federal government wants to adopt a new law on the competences of the Federal Criminal Police, including electronic surveillance of so-called *Gefährder* (i.e. people who might commit acts of terrorism but have not so far), in order to counter the impression that terrorists can steer a truck into a Christmas market in Berlin under the eyes of the security services with a powerful signal of determination. DIETER KUGELMANN is [unenthusiastic about these signals by the Federal Government to the Länder legislators](#) at the expense of fundamental rights and the complex balance in the federal security architecture.

Elsewhere

- NIKOS SKOUTARIS shows how a [reunification of Ireland could open up a way for the Northern Irish to remain in the EU](#), as opposed to the Scottish, whom
- JACQUES HARTMANN advises to look further north to the [Faroe Islands, whose status half within, half outside Denmark could be a future model for the Scottish case](#),
- and not to forget the Welsh, who voted for Brexit but, according to GEORGE PERETZ, will [suffer greatly from the exit from the Common Agricultural Policy](#).
- ELI GATEVA looks at [10 years of EU membership for Bulgaria and Romania, monitored by the EU with mixed results](#),
- SASA ZAGORC describes the [new law in Slovenia to enable the closing of the borders in the event of a renewed mass influx of refugees, at the expense of human rights and the Geneva Convention on Refugees](#), and
- MENAKA GURUSWAMY sees the [Indian Supreme Court under a tremendous responsibility to hold the illiberal populism of Hindu nationalist governments in check in the upcoming case of the Babri Mosque destroyed in 1992, and to prevent the constitutional self-destruction of the second most populous country and the world's largest democracy](#).

So much for this week. In the next, we will see if Trump can get his Supreme Court candidate Neil Gorsuch confirmed in the Senate, or whether the Republican majority will decide to abolish the Democrat means of obstruction, the filibuster (i.e. the hours of empty speeches to prevent the Senate from calling a vote), for good in these cases. This so-called "nuclear option", a grotesque exaggeration, can be drawn by the Republican majority alone whereas for the confirmation vote a number of Democrat votes is needed. Either way it is going to stay exciting.

In the meantime, all the best!

Max Steinbeis

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